

**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF MISSOURI  
EASTERN DIVISION**

RADHA GEISMANN, M.D., P.C.	)	
	)	
Plaintiff,	)	
	)	
v.	)	
	)	Cause No. 15-615
BE-THIN, INC.,	)	
	)	Jury Trial Demanded
KEVIN EBERLY,	)	
	)	
and	)	
	)	
JOHN DOES 1-10,	)	
	)	
Defendants.	)	

**NOTICE OF REMOVAL**

Pursuant to 28 U.S.C. §§ 1331, 1441, 1446, and 1453, Defendant Be-Thin, Inc. files this Notice of Removal of this action from the Missouri Circuit Court for the Twenty-First Judicial Circuit, St. Louis County, in which it is now pending, to the United States District Court for the Eastern District of Missouri. Removal is proper because this Court has original jurisdiction over claims arising under the Telephone Consumer Protection Act, 47 U.S.C. § 227 *et seq.* (the “TCPA”). In further support of this Notice of Removal, Defendant Be-Thin, Inc. states as follows:

**Commencement and Service**

1. On March 2, 2015, plaintiff Radha Geismann, M.D., P.C. filed a putative class action petition in the Missouri Circuit Court for the Twenty-First Judicial Circuit, St. Louis County, styled *Radha Geismann, M.D., P.C. v. Be-Thin, Inc., et al.*, Cause No. 15SL-CC00781.

Plaintiff alleged Defendants Be-Thin, Inc. and Kevin Eberly violated the TCPA by distributing unsolicited advertisements via a telephone facsimile machine.

2. Service of the petition on Defendant Be-Thin, Inc. is deemed effective as of March 16, 2015, when Defendant Be-Thin, Inc. acknowledged Plaintiff's service of the petition. This Notice of Removal is being filed within thirty (30) days of receipt of the petition as required by 28 U.S.C. § 1446(b).

3. Defendant Kevin Eberly consents to the removal of this action.

### **Grounds for Removal**

#### **A. 28 U.S.C. § 1331**

4. This Court has original jurisdiction over this action because it arises under a law of the United States, namely the TCPA. *See Mims v. Arrow Financial Services, LLC*, 132 S. Ct. 740 (2012).

5. For the foregoing reasons, removal of this action to this Court is proper pursuant to 28 U.S.C. §§ 1441(a) and (b).

### **Procedure for Removal**

6. Pursuant to 28 U.S.C. § 1446(a) and Local Rule 81-2.03, Defendant Be-Thin, Inc. files herewith a true and accurate copy of all process, pleadings, and orders filed in the state court, including the petition.

7. Pursuant to Local Rules 81-2.03 and 3-2.02, Defendant Be-Thin, Inc. files herewith the appropriate filing fee, the Civil Cover Sheet, an Original Filing Form, and a Disclosure of Organizational Interests Certificate.

8. Venue is proper in this district under 28 U.S.C. § 1441(a) because this district and division embrace the place in which the removed action has been pending.

9. Pursuant to 28 U.S.C. § 1446(d), a copy of this Notice of Removal will be provided promptly to counsel for plaintiff and Defendant Kevin Eberly and filed with the Clerk of the Circuit Court of St. Louis County, Missouri, under Cause No. 15SL-CC00781.

WHEREFORE, Defendant Be-Thin, Inc. hereby removes the above-referenced action now pending in the Missouri Circuit Court for the Twenty-First Judicial Circuit, St. Louis County to the United States District Court for the Eastern District of Missouri, Eastern Division.

Dated: April 14, 2015

SANDBERG, PHOENIX & von GONTARD, P.C.

By: /s/ Martin L. Daesch

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*Attorneys for Defendant Be-Thin, Inc.*

**Certificate of Service**

The undersigned certifies that a copy of the foregoing was sent via electronic mail and via United States mail, postage pre-paid, this 14th day of April, 2015, to the following counsel of record:

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/s/ Martin L. Daesch\_\_\_\_\_